THE DIRECTOR OF CENTRAL INTELLIGENCE
WASHINGTON, D. C. 20505

OLC 78-2002/N

13 JUL 1978

Office of Legislative Counsel

OMB

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Jim:

We have received your office's request for views on the Department of State's proposed submission to the House-Senate conferees on H.R. 12598, the "Foreign Relations Authorization Act, Fiscal Year 1979." Our views on this legislation are contained in my letter and attachment containing proposed language to you, dated 17 July 1978. I would like to offer a few comments keyed to the Department of State's proposals.

1. Tab 28, subsection 119(2) of the Senate bill, amending the so-called "Role of the Ambassador Legislation" (22 U.S.C. 2680a). While we certainly concur with the stated Administration position opposing subsection 119(2) in the Department of State's proposal, I believe the proposed language contained in the material I sent you on 17 July 1978 provides the necessary and more appropriate substantive points in opposition to subsection 119(2). In particular, I think it is important that the Administration note the potentially serious adverse effects on the President's discretionary authority under 22 U.S.C. 2680a if the language proposed by subsection 119(2) were adopted.

2. Tabs 32A through 32E, Title V of the House bill, "Science, Technology, and American Diplomacy." In our view, the Administration should oppose this title. Not only would the provisions of Title V be extremely burdensome to implement and enforce, but the basic terms--"science and technology" activities, initiatives and agreements--are nowhere defined in the legislation; this would present additional practical burdens.

It is our understanding that intelligence activities, which may involve liaison activities that in turn could concern "science or technology" matters, are not intended to be covered by Title V of the House bill. I therefore request that absent general opposition to this title, the Administration position include a specific recommendation that the title be amended as follows to make clear that intelligence activities are not covered: [Subsection 503(c)

of H.R. 12598 be amended to read as follows with additional language underscored and language to be deleted stricken through]

> "(c) Except as otherwise provided by law, nothing in this ~~section~~ title shall be construed as requiring the ~~public~~ disclosure of sensitive information relating to intelligence sources or methods or to persons engaged in monitoring scientific or technological developments for intelligence purposes."

It is further recommended that the congressional report accompanying this legislation include the following language with respect to subsection 503(c): "Section 503(c) makes clear that intelligence activities, initiatives and agreements do not come within the provisions of this title." This point also should be included as part of the Administration's position.

3. Tab 36, section 108 of the Senate bill "Clarification of Information Reporting Requirements." We recommend deletion of the phrase "... clarifies the intent of the Congress concerning ..." in the proposed explanatory language included in the Department of State paper. In our view proposed section 108 does not clarify anything. The explanatory language, therefore, should begin as follows: "Senate. Section 108 concerns reporting responsibilities..."

We concur in the position that the Administration oppose enactment of section 108. Our reasons in support of this position, as outlined in my letter to you of 17 July 1978, go beyond those contained in the Department of State's proposal, and we request that these additional arguments be included as part of the Administration's material to the conferees. We also request that the final sentence of the proposed Administration position submitted by the Department of State, which refers to section 102 of the National Security Act of 1947, as amended, be deleted. In our view, the argument that section 102 of the National Security Act is inconsistent with section 108 of the bill, is not clear and is therefore not the strongest argument the Administration could put forward.

4. Tab 67, section 501 of the Senate bill, amendments to the Case-Zablocki Act. With regard to subsection 501(a), which concerns oral agreements, we believe the Administration position should include, in addition to the argument contained in the Department of State's proposal [that the provision would

be extremely difficult to enforce], the points in my letter to you of 17 July 1978. These points explain in more detail why subsection 501(a) would be unacceptably burdensome and difficult to enforce, and note that the provision could have a significant adverse impact on intelligence activities in particular. I believe this is a telling argument, and one the Administration should put forward.

As concerns subsection 501(b), regarding reporting of late transmittals, we support the position in the Department of State proposal.

Subsection 501(c) concerns the prior approval of the Secretary of State or the President. The proposed Department of State position leads off by stating that the Administration favors this subsection, with a recommended amendment. While we would accept this position, we see no reason why the Administration should endorse this subsection. Rather, in our view, the position should be that the Administration opposes subsection 501(c) as unnecessary and inappropriate, but that the Administration could accept the amendment as proposed by the Department of State.

The Department of State proposal is silent with regard to subsection 501(d) of the Senate bill. As noted in my letter to you of 17 July 1978, we recommend that the Administration propose the following language be deleted from the subsection: "... through the Secretary of State ..." The reasons for this position are contained in the above-mentioned letter.

5. Tab 68, section 502 of the Senate bill, "Approval of Certain International Agreements." Rather than state merely that the "Administration is prepared to develop, in cooperation with Congress, an improved process of consultation," we recommend that the Administration also state its opposition to this provision. We see no positive reason to support this subsection, which could, insofar as intelligence matters are concerned, be construed to require prior consultation with the Congress before certain intelligence agreements are concluded (it should be emphasized that the language of the subsection specifies that such consultation be undertaken "prior to and during the negotiation of such agreement").

Thank you for the opportunity to comment on these matters. I look forward to assisting in the further preparation of the Administration's position on these provisions in H.R. 12598. Please let me know if there are any questions with regard to including in that material the matters discussed in this letter and in my 17 July 1978 letter to you.

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[redacted]

for Frederick P. Hitz
Legislative Counsel

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